



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SRS Technologies

File: B-254425.3

Date: May 11, 1995

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., for the protester.

Keith L. Baker, Esq., and Sean P. Morgan, Esq., Eckert Seamans Cherin & Mellott, for IMS Services, Inc., an interested party.

Robert M. Jusko, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

Digest

General Accounting Office (GAO) dismisses protests where the protester files a complaint in a United States District Court that requests the same remedy as the protest and there is no indication that the court requests, expects, or is interested in GAO's decision.

DECISION

SRS Technologies protests an award to IMS Services, Inc. under request for proposals (RFP) No. N68936-93-R-0172, issued by the Department of the Navy, as a small disadvantaged business (SDB) set-aside, for telecommunications operations and maintenance support services.

We dismiss the protest because the matter involved is related to a protest currently pending before a court of competent jurisdiction.

The Navy initially awarded a contract to IMS, which was the subject of our decision, SRS Technologies, B-254425.2, Sept. 14, 1994, 94-2 CPD ¶ 125, wherein we sustained SRS's protest because it received prejudicially misleading discussions, and recommended that the Navy reopen discussions, request a new round of best and final offers (BAFO), and, if an offeror other than IMS was selected for award, terminate the contract awarded to IMS. The Navy received and evaluated revised BAFOs and selected SRS for

award. The Navy then requested that the Small Business Administration (SBA) rule on SRS's status as an SDB concern, inasmuch as the Navy had questions on this matter. On March 24, 1995, the SBA determined that SRS was not an SDB concern. The Navy then determined that SRS is not eligible for award and selected IMS for award. The Navy had not terminated the contract initially awarded to IMS and now proposes to proceed with performance under that contract. Meanwhile, SRS appealed the SBA determination and the SBA affirmed its determination.

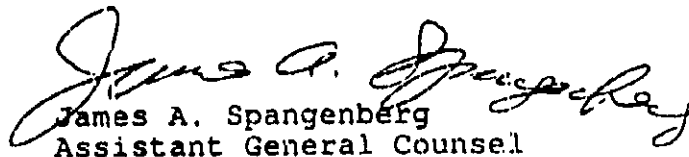
SRS filed this protest with our Office on March 31, 1995, challenging the Navy's decision not to award to SRS, as well as the award to IMS. SRS essentially alleges that the agency waited longer than permitted under applicable regulations for the SBA determination as to SRS's SDB status and that IMS's proposal should have been considered technically unacceptable.

On April 28, SRS filed an action in the United States District Court for the District of Columbia requesting a temporary restraining order, a preliminary injunction, and permanent and declaratory relief from the SBA determination and from performance under the RFP by any offeror other than SRS. In its complaint, SRS asserts that the determination as to its SDB status was improper and should not have precluded award under this RFP, and that IMS's SDB status has also been protested and the agency should be precluded from authorizing contract performance until that protest has been resolved by the SBA.

The issues raised in SRS's protest to our Office, as well as the remedies requested, are similar and/or related to those in its court complaint. In both forums, SRS contests on both substantive and procedural grounds the determination of its SDB status, as well as SRS's and IMS's eligibility for award under the RFP, and in both forums SRS seeks a prohibition on contract performance under this RFP by any offeror other than SRS. In fact, as a practical matter, SRS's complaint in court puts at issue the substance of SRS's protest before our Office. It is our policy not to decide protests where the matter involved is the subject of litigation before a court of competent jurisdiction unless the court requests our decision. 4 C.F.R. §§ 21.3(m)(11), 21.9(a) (1995); Robinson Enters.--Recon., B-238594.2, Apr. 19, 1990, 90-1 CPD ¶ 402. Since there is no indication that the court requests, expects, or is interested in our

decision, we will not consider SRS's protest. See
Travelogue, Inc., B-216673.10; B-216673.11, Apr. 8, 1985,
85-1 CPD ¶ 399; Adams & Assocs. Travel, Inc. et al.,
B-216673.2 et al., Feb. 1, 1985, 85-1 CPD ¶ 124; Stirling
Converting Co., Inc., B-215202.2, July 3, 1984, 84-2 CPD
¶ 16.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel